

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

US FOAM, INC, et al,
Plaintiffs,

V.

ON SITE GAS SYSTEMS, INC.
Defendant.

ON SITE GAS SYSTEMS, INC.
Plaintiff,

V.

USF TECHNOLOGIES, INC., et al,
Defendants.

US FOAM, INC., et al
Plaintiffs,

V.

CUMMINS INDUSTRIES, INC., et al,
Defendants.

CIVIL ACTION NO. 2-07-cv-466-TJW

CIVIL ACTION NO. 6:08-cv-231-LED

CIVIL ACTION NO. 2-07-cv-491-TJW-CE

ORDER

For the following reasons, the Court dismisses all claims, counterclaims, and affirmative defenses without prejudice in the action of *US Foam, Inc. et al v. Cummins Industries, Inc. et al* (Civil Action No. 2:07-cv-491-TJW-CE). On February 24, 2010, the Court entered an order consolidating the following cases: (1) *USF Equipment v. Allied Intl' Emergency*, Case No. 07-490,

(2) *US Foam, Inc. v. On Site Gas*, Case No. 07-446, and (3) *US Foam v. Cummins*, Case No. 07-491. The order further stated that “(1) all Pretrial Submissions (e.g. Pretrial Orders, Motions in Limine, Witness Lists, and Exhibit Lists) for all three matters shall be filed in the matter, *U.S. Foam, Inc. et al. v. ON Site Gas Systems, Inc.* (Civil Action No. 2:07cv00466-TJW as the Lead Case for the purposes of trial according to the Pretrial Scheduling Deadlines in that matter, and, (2) this Court schedules a Jury Selection on April 4, 2011 for all the above-identified cases, with a consolidated trial to occur thereafter.” The Court entered an Amended Docket Control Order in the lead case on October 27, 2008. The Amended Docket Control Order set March 18, 2011, as the deadline for the parties’ joint pretrial order, joint proposed jury instructions, and form of the verdict. The Court then presided over a consolidated claim construction hearing and entered an order construing the disputed terms on August 3, 2010. The parties in the other two cases have since settled, leaving this as the only remaining case.

In this case, Plaintiff s’ former counsel withdrew from the case on January 13, 2011, and Defendants’ counsel withdrew on October 25, 2010. Given the approaching deadlines, the Court entered an order on March 2, 2011, requiring the legal entities in this case to obtain counsel before the pretrial conference. In the order, the Court informed the parties that corporations and partnerships cannot appear for themselves and that their only proper representative is a licensed attorney. *Sw. Express Co. v. Interstate Commerce Comm’n*, 670 F.2d 53, 55 (5th Cir. 1982) (per curiam).

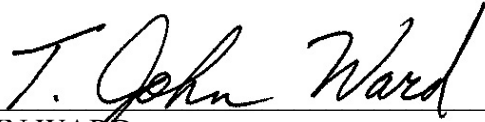
On March 29, 2010, the Court held a Pretrial Conference. Defendants’ did not obtain counsel and Plaintiffs’ did not obtain counsel until the day of the pretrial conference. The parties did not submit a joint pretrial order, joint proposed jury instructions, or form of the verdict as required by the Amended Docket Control Order. Plaintiffs’ counsel at the pretrial conference

could not provide any explanation why his client failed to follow the Court's order, and only represented that his client has attempted to settle the matter. Plaintiffs' counsel then requested extra time to get the matter ready for trial.

Given the Court's current docket, the Court finds that the parties are not entitled to extra time to prepare the matter for trial. The parties have been aware of the impending trial date and other deadlines since October 27, 2008. It would be unfair to push other cases back when the parties in those cases have worked hard to prepare their case for trial. Because the parties failed to meet the Court's deadlines and are not ready for the scheduled trial, the Court dismisses all claims, counterclaims, and affirmative defenses without prejudice. All relief not expressly granted herein is otherwise denied.

IT IS SO ORDERED.

SIGNED this 30th day of March, 2011.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE